IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.K.MOHANAN

THURSDAY, THE 13TH SEPTEMBER 2007 / 22ND BHADRA 1929

Crl.MC.No. 2163 of 2004(C)

CP.7/2004 of JUDL. MAGISTRATE OF FIRST CLASS COURT-I, ATTINGAL

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PETITIONER:

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1. P.K.SUKUMARAN, S/O.KESAVAN,
   MANAGER, M.G.M.ENGLISH MEDIUM SCHOOL,
   KEEZHUVILLAM, MAMOM, CHIRAYINKEEZHU.

2. SHAJI, S/O.SUNDARESAN, SUPERINTENDENT,
   M.G.M. ENGLISH MEDIUM SCHOOL,
   KEEZHUVILLAM, MAMOM, CHIRAYINKEEZHU.

3. BHASKARAN, SUPERVISOR FOR WORKS,
   M.G.M.ENGLISH MEDIUM SCHOOL,
   KEEZHUVILLAM, MAMOM, CHIRAYINKEEZHU.

4. SUNDARESAN @ VAKKU, SECURITY,
   M.G.M. ENGLISH MEDIUM SCHOOL,
   KEEZHUVILLAM, MAMOM, CHIRAYINKEEZHU.

BY ADV. SRI.ANIL K.NARENDRAN

RESPONDENTS: STATE AND COMPLAINANT

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1. THE STATE OF KERALA, REP. BY THE
   PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
   ERNAKULAM, (SUB INSPECTOR OF POLICE,
   CHIRAYINKEEZHU POLICE STATION).

2. BHANU, S/O.SANKARAN,(DIED)
   PARAKATTUVEEDU, PARAYATHUKONAM,
   KEEZHUVILLAM VILLAGE, CHIRAYINKEEZHU TALUK.

ADDL.R3: SMT. PONNAMMA, POOTHAKUZHI VEEDU,
CHIRAYINKEEZHU P.O., THIRUVANANTHAPURAM DISTRICT.
PIN 695 304

.(ADDL.R3 IMPLEADED AS PER ORDER DT.13-9-2007 IN CRL.M.A.4051/2006)

ADDL. R3 BY ADV. SRI.J.JAYAKUMAR
R1 BY PUBLIC PROSECUTOR SRI C.M.KMMAPPU

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 13/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V.K.MOHANAN, J.

CRL.M.C.NO. 2163 OF 2004

Dated 13th September, 2007

ORDER

Petitioners are accused nos.1, 2,3 and 7 in C.P No.7/2004 on the file of the Judicial Magistrate of the First Class -I, Attingal which is instituted upon a complaint filed by the 2nd respondent against the petitioners as well as other 3 accused alleging commission of offences punishable under sections 120B, 447, 448, 436, 452, 456, 457, 307, 380, 398, 142, 144, 145, 146, 148 and 149 of the Indian Penal Code. In this Crl.M.C., the petitioners challenged the proceedings in the above C.P.7/2004 on the ground that the above proceedings is initiated with mala fide intention so as to wreak vengeance against the petitioners etc.

2. When the above Crl.M.C. came up for admission, this Court has granted stay of further proceedings in the above C.P. and the stay is continued. In the meanwhile, the petitioners herein filed Crl.M.Appl.No.4051 of 2006 for impleading the additional respondent, who is the sister of the 2nd respondent/complainant who died on 25-1-2006. On 2-8-2006,

notice was issued in the above impleading petition, which was served on the additional respondent and service is completed.

3. When the matter is taken today for consideration, there is no representation for the additional respondent. Though notice on the additional respondent was served much earlier, records show that there is no appearance and it is not discernible whether the additional respondent is interested either in defending the Crl.M.C. or prosecuting the complaint pending before the court below. The proceedings in the court below is in a standstill because of the stay order granted from this court. If the additional respondent is not interesting in prosecuting the complaint, it is open to the court below to dispose of the complaint in accordance with law. But for the stay order granted from this Court, the court below is not in a position to further proceed with the complaint. Therefore, I am of the view, instead of going into the merits and demerits of the case of the petitioners as well as the complaint, it is better to enable the court below to proceed with the complaint and dispose of the complaint in accordance with the procedure and law.

4. The learned counsel appearing for the petitioners

submitted that the Ist petitioner is now at the age of 71 years and requested to exempt him from appearing before the court below for the time being. The learned counsel appearing for the petitioner submitted that after 21-8-2004, case in the court below is being adjourned on the basis of the stay granted from this Court and it is not known whether the legal heirs of the complainant or the additional respondent herein is interested in prosecuting the complaint.

5. In the above circumstances, according to me, there is no meaning in kept pending the above Crl.M.C. in this Court and the same can be disposed of with a direction to the court below to proceed with the complaint in accordance with law and to dispose of the same accordingly instead of stalling the proceedings. In the above circumstances, the court below can be directed to take up C.P.7/2004 for consideration and to proceed with the same in accordance with law and procedure and the presence of the petitioners need be insisted only if additional respondent or legal heirs of the 2nd respondent is interested in prosecuting the complaint, since in spite of service of notice on the additional respondent, she is not turned up and

no step is taken to defend Crl.M.C.2163/2004. Accordingly, the court below is directed to take up C.P.No.7/2004 and to proceed with the complaint as aforesaid within one month from the date of receipt of copy of this order. The contentions raised in this Crl.M.C. is left open and the petitioners will be at liberty to raise those contentions before the court below, in case the additional respondent or the legal heirs of the complainant choose to prosecute the complaint.

With the above observation, the Crl.M.C. is disposed of.

V.K.MOHANAN, JUDGE.

Kvm/-

V.K.MOHANAN, J.

No....

Judgment/Order

Dated: